IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENTNO. 438 OF 2003

WITH

SUMMARY SUIT NO. 1991 OF 2002

Smt.Gulnaz Riaz Nensey .. Plaintiffs

versus

M/s.Cosmos Publicity & Display & ors.. Defendants

...

Mr.P.B. Kapadia for the plaintiff.

CORAM : D.G. KARNIK,J.

DATED : 14th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. Perused the affidavit of service and also the report of the Section Officer dated 7th march 2005. From the said affidavit and report, it appears that the writ of summons was served on defendant nos.1, 3 and 5 by affixing on 28th February 2003 as well as

sending it by RPAD. Despite service, the defendant nos.1, 3 and 5 have not filed an appearance. The plaintiff is entitled to a decree under Order 37 Rule 2(3) of the Code of Civil Procedure.

3. Perused the affidavit of service dated 1st March 2005 regarding the service of Summons for judgement on defendant nos.2 and 4. Despite service of Summons for Judgement on defendant nos.2 and 4 through their Advocate, the defendant nos.2 and 4 have not filed any affidavit in reply. In the circumstances, the averments made in the plaint are deemed to be accepted by them and the plaintiff is entitled to a decree under Order 37 Rule 3(6) of the Code of Civil Procedure.

4. The learned counsel for the plaintiff hands in original documents. The documents are taken on record and collectively marked Exhibit-A.

5. Perused the plaint and the documents filed on record. From the plaint and documents, it appears that the defendant no.1 is the partnership firm and defendant nos.3 to 5 are its partners. For a valuable consideration, the defendant no.1 drew a bill of exchange for Rs.1,00,000/- and the defendant

no.2 accepted the same. However, the defendant no.2 failed and neglected to pay on presentation for payment. The plaintiff demanded the payment from the defendants by a demand notice. However, the defendants failed and neglected to pay. In the circumstances as mentioned above, the plaintiff is entitled to a decree of the principal sum and interest under section 80 of the Negotiable Instruments Act. As regards the interest on the date of the suit, the plaintiff is entitled to a reasonable interest u/s.34 of the Code of Civil Procedure. Hence, I pass the following order:-

6. Summons for Judgement is made absolute against defendant nos.2 and 4 and the suit of the plaintiff is decreed against all the defendants as follows:-

7. The defendant shall pay to the plaintiff a sum of Rs.1,39,000/- together with interest on the principal sum of Rs.1,00,000/- at 9% p.a. from the date of the suit till payment and all costs of the suit.

8. Issue Court fee refund certificate as per rules.

D.G. KARNIK,J